

Senate Joint Resolution No. 20

RESOLUTION CHAPTER 107

Senate Joint Resolution No. 20—Relative to regulation of financial institutions.

[Filed with Secretary of State June 28, 2004.]

LEGISLATIVE COUNSEL'S DIGEST

SJR 20, Florez. Regulation of financial institutions.

This measure would request the Congress of the United States to disapprove the rule submitted by the Office of Comptroller of the Currency relating to bank activities and regulations as published in the Federal Register on January 13, 2004, so the rule has no force and effect, and if necessary, to consider legislation that will prevent the unilateral expansion of jurisdiction over financial institutions by federal regulators without the specific endorsement of the United States Congress.

WHEREAS, The Senate and Assembly Banking Committees of the California Legislature have held an informational hearing on the doctrine of federal preemption of state laws and the impact on California and its financial regulators; and

WHEREAS, The California Constitution provides that an administrative agency of the state has no authority to declare a state law unenforceable unless an appellate court determines that the statute is prohibited by federal laws or regulations; and

WHEREAS, There are two areas where tension exists between federal and state law in the fields of regulation of financial institutions, which are the areas relating to the jurisdiction over the operating subsidiaries of national banks and consumer protection; and

WHEREAS, Operating subsidiaries of national banks engage in various financial services such as mortgages, insurance, and securities-brokerage services that are beyond the scope of the business of banking as originally conceived in the National Bank Act of 1864; and

WHEREAS, Operating subsidiaries of national banks are creatures of state law, not federal law, and are incorporated under state law and in the past have applied for licenses from state regulatory authorities to operate within California; and

WHEREAS, In August of 2001, and in January of 2004, the Office of the Comptroller of the Currency (OCC) promulgated a regulation that effectively stated that the OCC was the exclusive regulator of national banks and their operating subsidiaries and this regulation placed the

OCC on a collision course with California regulators of financial institutions; and

WHEREAS, The OCC has appeared as amicus curiae in several recent federal court cases opposing consumer protection legislation that has been passed by the California Legislature, on the basis that the legislation interfered with the power of national banks and their operating subsidiaries to engage in the business of banking; and

WHEREAS, There has been a clear, consistent, and premeditated effort by the federal government, specifically on the part of the OCC, to exercise jurisdiction in financial regulation matters that were previously the jurisdictional domain of the states, and the exercise of the jurisdiction has been assisted by a complacent United States Congress and deferential court system; and

WHEREAS, Certain interpretations of law by the OCC and the Office of Thrift Supervision have prevented the application of state consumer protections to federally-chartered financial institutions, and frustrate the efforts of state regulators and legislators to extend these protections to all citizens; now, therefore, be it

Resolved by the Senate and Assembly of the State of California, jointly, That the Legislature of the State of California, recognizing that the authority to resolve these issues rests with the federal courts and the United States Congress, respectfully requests that the United States Congress disapprove the rule submitted by the Office of Comptroller of the Currency relating to bank activities and regulations published at 69 Federal Register 1895 (January 13, 2004), so the rule will have no force or effect, and if necessary, consider legislation that will prevent the unilateral expansion of jurisdiction over financial institutions by federal regulators without the specific endorsement of the elected representatives of the United States Congress; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to each Senator and Representative from California in the Congress of the United States, to the Office of the Comptroller of the Currency, and to the Office of Thrift Supervision.

